



Discrimination Complaint Processing Update

**From the Deputy Assistant Secretary
For Resolution Management
Office of Resolution Management
Department of Veterans Affairs**

From the Deputy Assistant Secretary

June 2003



Focus on ADR and Mediation

ORM has been charged with working with the offices of the Secretary, Deputy Secretary, and the administrations (Veterans Health Administration, Veterans Benefits Administration, and National Cemetery Administration) to identify critical aspects of Alternative Dispute Resolution (ADR) that are needed to increase ADR activity in field facilities.

ORM is committed to the resolution of disputes at the lowest organizational level. ORM, in conjunction with the Office of Alternative Dispute Resolution and Mediation, has devoted enormous effort and resources toward promoting the use of Alternative Dispute Resolution (ADR). Although information regarding ADR is provided to individuals involved in an EEO complaint, there is a critical need to promote the value of ADR to VA managers and other employees not immediately involved in the EEO complaint process.

Whenever opportunities arise, ORM communicates the positive effects early resolution efforts often have on workplace disputes so that, ultimately, employees can concentrate on providing high-quality service to veterans.

During FY 2002, I made numerous presentations - to such groups as Leadership VA classes, the Veterans Health Administration's (VHA) National Leadership Board, the Equal Employment Opportunity Commission (EEOC) Chairperson, the EEOC EXCEL Conference, Regional EEO Conferences and VA field facilities - to underscore the importance of addressing workplace disputes as early as possible.

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To ensure VA's compliance with EEOC's requirement to incorporate ADR into the complaint process, ORM's ADR plan has been incorporated into the agency's EEO management directive. During meetings with the Under Secretary for Health and the Deputy Under Secretary for Benefits, discussions have focused on the need to assess existing ADR programs and develop strategies for expanding the use of ADR.

To further the use of ADR, VA has developed the following ADR Program Objectives and Goals:

Goal: Foster excellence in the workplace by creating a culture, embraced by employees, labor, and management, where mediation and open communication will become the preferred methods of resolving issues for all participants.

Objective 1: Every employee is aware that ADR is available to him/her, has a basic understanding of the process, and knows how to access ADR resources. (Communication & Education)

Objective 2: Every employee has access to ADR resources. (Access)

Objective 3: ADR points-of-contact, mediators, supervisors, and union representatives are appropriately trained in ADR techniques, tools, and policies. (Training)

Objective 4: ADR is effectively used within the Department and performance is measured and evaluated. (Operations & Results)

Your support in the effort to expand the use of ADR through mediation to resolve workplace disputes in VA is vitally important to achieving these goals and objectives. Mediation is the preferred method of ADR adopted by VA. Mediation is cost effective, timely, and voluntary. Mediation leads to improved employee morale and team building. One result of the effort to increase awareness of the availability of mediation during the complaint process is that the number of individuals electing ADR increased approximately 25% the first eight months of fiscal year 2003 compared with the same time frame in fiscal year 2002. Our aim is to create an environment where managers and employees see the benefit of using mediation in settling workplace disputes.

Spreading the message on the effectiveness of mediation to resolve workplace disputes requires your assistance to ensure it reaches all employees. Mediation is a "win-win" situation for everyone involved.

James S. Jones

Program Highlights

EEOC Commends VA on Improvement to EEO Complaint Processing Program

By Terry Washington, External Affairs Program

Cari Dominquez, Chair of the Equal Employment Opportunity Commission, recently wrote Secretary Principi commending the Department of Veteran Affairs (VA) for improvement in our equal employment opportunity (EEO) complaint processing program. Chair Dominquez stated “ It is with great pleasure that I write to commend your agency’s efforts during FY 2002 in making Improvements to your EEO complaint processing program.” Her letter went on to state that “ ...we wish to recognize your agency among those having shown the greatest improvement between FY 2001 and 2002 in one or more of the following EEO program measures: (1) reduction in the average time for conducting EEO investigations; (2) reduction in the average time for issuing a decision without a hearing; and (3) increase in the percentage of employee participation in Alternative Dispute Resolution (ADR).”

VA was cited as one of two cabinet level agencies (Department of State was the other) that showed significant improvements in their EEO programs. VA was recognized for a 31 percent reduction in issuing a decision without a hearing. The Department of State was cited for a 44 percent reduction in the time for conducting EEO investigations and a 22 percent increase in employee alternative dispute resolution (ADR) participation.

Efforts are under way in ORM to reduce EEO complaint processing times in VA to 180 days or less by the beginning of fiscal year 2004. We are also working with VA’s Office of Alternative Dispute Resolution and Mediation to expand the use of mediation as VA’s preferred method of ADR to address not only EEO issues, but also other workplace disputes at VA facilities. ■

VA EEO Complaint Activity Comparison Data

By Terry Washington, External Affairs Program

The Office of Resolution Management's Office of Policy and Compliance (OPC) has prepared and issued, to each VA administration, a comparison of VA equal employment opportunity (EEO) informal and formal complaint activity data for fiscal years 2001 and 2002. The title of this document is *Office of Resolution Management Comparison Charts, Informal and Formal Complaint Activity, FY01 and FY02*.

The data (in the form of charts) is not intended to provide an in-depth analysis of the reasons why complainants initiated EEO complaints but rather is a comparison of complaint activity during the periods covered. It is being provided to assist VA managers in monitoring EEO complaint activity at facilities under their direction. Insight into the reasons why individuals initiate EEO counseling or file formal complaints is available in our *Root Cause Report* found on our Web site at <http://vaww.va.gov/orm>.

The data used in these charts was extracted from ORM's Web-Based Tracking System (WBTS). This tracking system categorizes informal and formal complaints into organizational units identified as Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), National Cemetery Administration (NCA), Veterans Canteen Service and Central Office.

The charts provide the following:

- A comparison of equal employment opportunity (EEO) complaint activity for fiscal years 2001 and 2002.
- A breakdown of the VA by Administration (VHA, VBA, NCA).
- A breakdown of each Administration into their major operating components (VISN, MISN, Areas).
- The conversion of the number of informal and formal filings into per capita filing rates per 1,000 employees.

Updates of this comparison data will be issued periodically. Please contact our Office of Policy and Compliance at (202) 501-2680 for more information.



Avoiding Liability for Sexual Harassment

By Terry Washington, External Affairs Program

A recent article in the June 23, 2003, Federal Human Resource Week discussed a sexual harassment case involving an agency's liability for sexual harassment. The case is *Mckinney v. U.S. Postal Service*, 103 LRP 20863 (EEOC OFO 05/02/03).

The Equal Employment Opportunity Commission (EEOC) found that the U.S. Postal Service (USPS) failed to avoid liability for sexual harassment and retaliation when a manager touched the complainant's buttocks and the agency's response fell short of the reasonable care standard. This ruling was reached after EEOC found that the agency failed to exercise reasonable care to correct the harassment when it returned the offending manager to a supervisory position over the complainant.

The background of this case is as follows: An EEOC administrative judge (AJ) found, after a hearing, that the complainant was subjected to sexual harassment when she was touched in an inappropriate manner by her manager. The manager was placed on leave and issued a notice of removal by the agency. The manager appealed to the Merit System Protection Board (MSPB) and, as a result of a settlement to his appeal of his removal, was returned to the complainant's shift and supervisory chain of command.

The EEOC AJ found that (1) even though the agency initially responded in an appropriate manner, it was liable for the manager's actions because it returned him to a supervisory position over the complainant and (2) that the agency's action was unlawful retaliation. The AJ also awarded the complainant \$2,500 in compensatory damages for the improper touching and \$50 for every day the manager supervised her after he returned.

The agency, in rejecting the AJ's decision, argued, that the single incident of touching was not sexual harassment, and that the award of \$50 per day was punitive.

EEOC found, on appeal, that sexual harassment had occurred and that the agency could not avoid liability because it did not take reasonable care to ensure the harassing behavior stopped when it returned the manager to a supervisory position over the complainant. The EEOC also noted that returning the offending manager to a supervisory position over the complainant was reasonably likely to deter further protected activity.

EEOC also found that the \$2,500 in damages was sufficient to compensate the complainant for emotional distress resulting from the inappropriate touching by the manager and that the \$50 per day, rather than being

punitive, was an attempt to compensate the complainant for her day-to-day emotional distress. EEOC however, concluded that an outright award of \$10,000 was more practical and also awarded the complainant additional monies for psychotherapist visits and a prescription.

An agency, in order to raise an affirmative defense to liability for a supervisor's hostile work environment involving sexual harassment, must show:

1. That it exercised reasonable care to prevent and correct promptly any harassing behavior and;
2. That the complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by the agency or to avoid harm otherwise.

USPS failed to meet the requirements for an affirmative defense to liability in this case because it could not show that it met these requirements. This case illustrates how important it is for an agency to ensure that it takes reasonable care to correct harassment when addressing sexual harassment complaints, especially in cases involving managers. ■

New Regional EEO Officer Selected for Washington Field Office, Mid-Atlantic Operations

Mr. David Betts joins ORM as the new Regional EEO Officer for the Washington Field Office (Mid-Atlantic Operations). He will be replacing Peggy Joyner who now heads our Quality Assurance Program. Mr. Betts served as an EEO Director with the Air Force. He is retired from the Air Force, with a law degree, and is married with three children. ■

“Complaint Prevention and Resolution is Everybody’s Business”

ORM Field Office Geographic Jurisdictions

ORM Field Offices have been assigned geographic designations for their areas of jurisdiction. The new designations are:

Northeastern Operations – Lyons, NY

Mid-Atlantic Operations – Washington, DC

Southeastern Operations – Bay Pines, FL (Includes Puerto Rico)

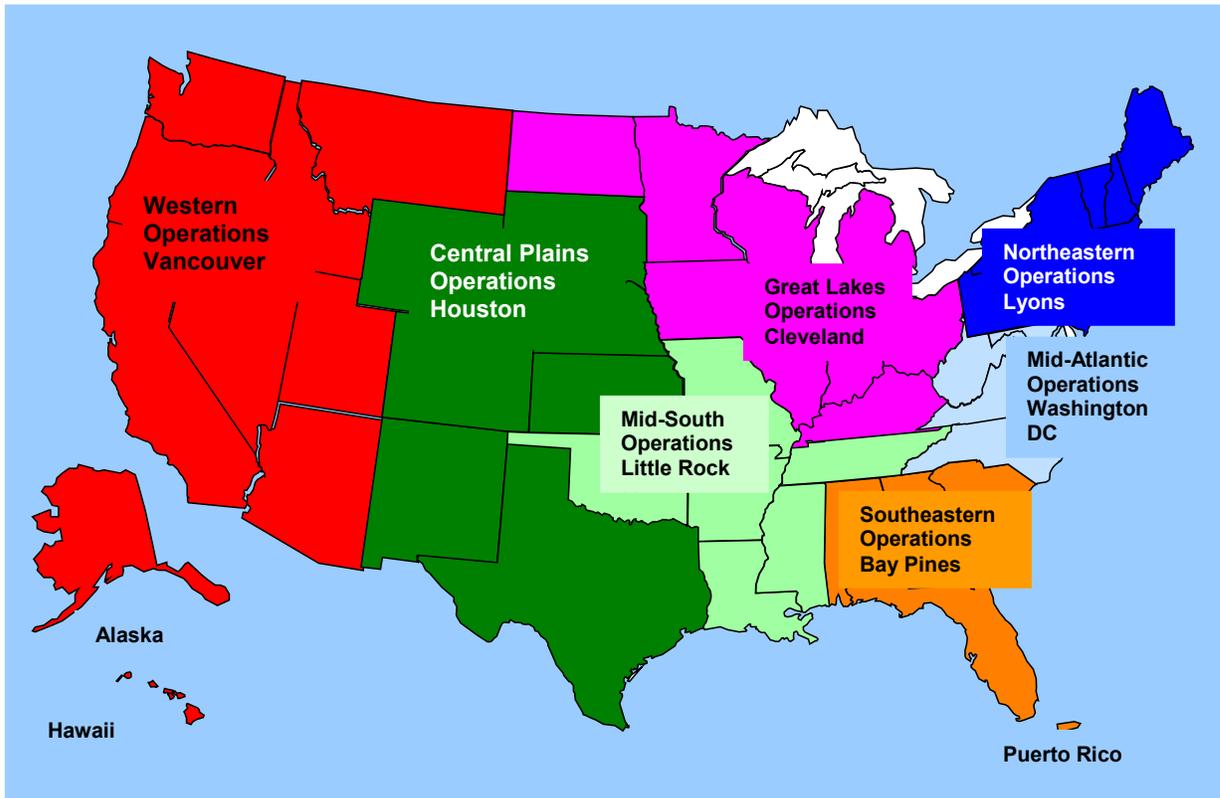
Mid-South Operations – Little Rock, AR

Central Plains Operations – Houston, TX

Great Lakes Operations – Cleveland, OH

Western Operations – Vancouver, WA (Includes Alaska and Hawaii)

The areas of jurisdiction are shown below:



ADR/Mediation Programs and Training

VA Mediation Certification Program -- VA has begun a program whereby VA employees serving as mediators can be certified if they meet certain standards of competency. To receive certification, an employee must have completed 24 hours of training in basic mediator skills and co-mediated at least 3 workplace mediations with an experienced mediator and received favorable evaluations, or alternatively, conducted at least 5 mediations within the preceding two years and received satisfactory evaluations from the mediation participants. The certification is good for two years. Anyone interested in becoming a certified mediator may obtain information and the appropriate forms for application at www.va.gov/adr/Medcert.pdf.

VA Certified Mediators -- A listing of VA *Certified Mediators* is available on VA's Alternative Dispute Resolution/Mediation Web page at <http://www.va.gov/adr/index.htm> or you can contact your local ORM Field Office at 1 888 737-3361.

Three Little Pigs Mediation Simulation -- VA has prepared a short cartoon simulation of a mediation using the Three Little Pigs and the Big Bad Wolf as the participants. This simulation demonstrates how parties can resolve their differences using mediation. You can view this video at www.va.gov/orm.

Executive Mediation Training -- The Justice Center of Atlanta offers *Executive Mediation Training*, a three-day course available to VA managers and executives

When: August 12, 13, and 14, 2003

Where: Atlanta, Georgia

Introduction to Mediation for Management and Union Officials -- The Office of Resolution Management's Learning Resource Center offers *Introduction to Mediation for Management and Union Officials*, a three-day seminar for VA managers and union officials.

When: September 9, 10, and 11, 2003

Where: ORM Learning Resources Center, Bay Pines, Florida

For more information on these courses, please contact our Learning Resources Center at 727-319-1232 or visit our Learning Resources Web site at: <http://vaww.va.gov/orm/ormlr/calendar.doc>.



What's New on the ORM Web Site?

Have you visited ORM's Web site lately? Visit our "What's New" page at <http://vaww.va.gov/orm/WhatsNew.htm> for the latest additions to our site. Information on the following topics is available:

- ORM's *FY 2002 Annual Report* is now available. To view the report click on "Reports/Opinions" and then "*ORM Annual Report*".
- A new *ADR/Mediation* page has been added to our Web site!

The Office of the Deputy Assistant Secretary for Resolution Management publishes *Discrimination Complaint Processing Update* quarterly. Please contact Terry Washington or Tyrone Eddins, External Affairs Program, by e-mail or by calling (202) 501-2800 concerning the contents of this newsletter. Additional information on ORM services and programs is available on our Web site at <http://vaww.va.gov/orm> (Intranet) or <http://www.va.gov/orm> (Internet).